DOUBLE EMPLOYMENT OF AGENT. — There is a difference of opinion on the question as to whether the same agent may ever be employed by the buyer and the seller in a single transaction. Upon this point the charge given in *Gracie* v. *Stevens*, New York Law Journal, Dec. 29, 1899, seems accurately to present the test applied in New York. The plaintiff had acted as agent both for the buyer and for the defendants, who were the sellers. The jury were told that, if the plaintiff was employed by the defendants merely to find a buyer, he was entitled to their verdict; if, however, his acting for the defendants required the slightest use of his own discretion, he could not recover. This test is well recognized in New York. *Empire State Ins. Co.* v. *American Central Ins. Co.*, 138 N. Y. 446. In many jurisdictions, however, it is disregarded. *Jansen* v. *Williams*, 55 N. W. Rep. 279 (Neb.): *Porter* v. *Woodruff*, 36 N. J. Eq. 174. See 9 HARVARD LAW REVIEW, 349.

On principle the New York test seems open to grave objections. It is a fundamental doctrine of agency that the relation between principal and agent is fiduciary in its nature. Whoever, therefore, is employed as an agent owes to his employer the utmost diligence in dealings in his behalf. This, of course, requires an intelligent business method on the agent's part. Now while in any case the business to be done may be simple and known in detail to the agent, there is always the possibility of an unexpected situation requiring the use of discretion. The possibilities of the principal case seem amply to illustrate the point. Granting that the plaintiff was employed merely to find a purchaser, two such may appear who are not equally responsible. Now, if he also be acting for the less responsible, the conflict of interests is apparent. He cannot, with the loyalty which he owes to the defendant, recommend the less responsible; nor can he, in good faith to the buyer for whom he is acting, do less than his utmost for him. In short, unless these contingencies are entirely disregarded, we can only say that, when one may act for one side in a perfectly mechanical capacity, he may also act for the other; but then the fiduciary nature of the former relation is gone, and the case is not one of real agency. There is no real agent who cannot use discretion in an unexpected situation. When both parties consent to a double employment, it is a different question; but it is to be regretted that the cases do not uniformly appreciate that the fiduciary relation between principal and agent is incompatible with a double employment of the agent.

LIABILITY FOR THE SPREAD OF FIRE. — The New York rule limiting liability for the spread of fire, negligently caused, to the damage resulting to abutting proprietors, has at length been put upon a basis which, though questionable, is at least consistent with itself. *Ryan* v. *N. Y. C. R. R. Co.*, 35 N. Y. 210, decided in effect that where fire was communicated by a defendant's negligence to the house of A, and thence to the adjoining house of B, the injury to B was, as a matter of law, the remote and not the proximate result of the negligent act. Subsequently this rule was limited strictly to the particular facts, and a recovery was allowed in the case of fires in the country. *Martin* v. *N. Y., O. & W. R. R.*, 62 Hun 181. The Court of Appeals has now decided, however, that such a rural non-abutting proprietor may not recover. Fire was communicated from the defendant's engine to rubbish negligently allowed to accumulate along the defendant's roadway, and thence burnt over the forest

lands of intermediate owners to the plaintiff's woodland two miles away. A judgment for the plaintiff was reversed in the Court of Appeals on the ground that the injury was not the proximate result of the defendant's negligent act, it not being a foreseeable consequence that the fire would spread beyond abutting lands, and the drought, atmosphere and wind being intervening causes of the damage. *Hoffman* v. *King et al.*, 55 N. E. Rep. 401 (N. Y.).

By the overwhelming weight of authority the defendant would be held liable in this case. *W. & St. P. R. R. Co.* v. *Kellogg*, 94 U. S. 469; 1 Shearman and Redfield on Negligence, § 30, 5th ed. And on principle it would seem that a recovery should be allowed. To incur liability for a negligent act, it must be the proximate and not the remote cause of the injury. It is everywhere granted that any injury which is the natural and probable consequence of the negligence is deemed proximate, provided no independent agency has intervened. Nor can the drought and high wind be considered as intervening causes. They are merely conditions surrounding the act at the time of its performance. Hence they really form part of the defendant's tortious act, for negligence is the failure to use due care under all the attendant circumstances. Clearly, therefore, a jury might have found that such an injury was reasonably foreseeable, that is, natural and probable. *Fent* v. *T. P. & W. R. R. Co.*, 59 Ill. 349. Nor can mere diversity of ownership make any difference; for there is no logic in saying that the probability of a certain tract of land being injured by the defendant's negligence is determinable according as it is owned by one person or by several. The argument that this extent of liability might result in the ruin of the defendant is answered by saying that there is more justice in letting a wrongdoer be ruined by his negligence than in allowing him by it to bring ruin upon other and innocent persons. See *Hoyt* v. *Jeffers*, 30 Mich. 181. The decision in the principal case, therefore, while consistent in a New York court, would seem to be unsupportable on grounds either of principle or expediency.

RECENT CASES.

ADMIRALTY — FORFEITURE — DEGREE OF PROOF. — In a proceeding by the government for the forfeiture of a vessel, because of a violation of her license by carrying smuggled goods, *held*, that the prosecution can prove its case by a preponderance of the evidence. *The Good Templar*, 97 Fed. Rep. 651 (Dist. Ct., Mass.).

This decision is opposed to the authorities and seems questionable upon principle. The proceeding, though civil in form, is clearly criminal in its nature, being instituted by the government in order to punish a breach of its laws. The government should therefore be obliged to prove its case beyond a reasonable doubt. Such is the view adopted by two previous decisions in the federal courts. *United States* v. *The Burdett*, 9 Pet. 682; *United States* v. *Shapleigh*, 12 U. S. App. 26. In a similar class of cases, where a suit is brought to recover a statutory penalty, the uniform rule is that the defendant is within the constitutional guaranty in criminal cases, and cannot be compelled to testify against himself. *Boyd* v. *United States*, 116 U. S. 616; *Lees* v. *United States*, 150 U. S. 476.

AGENCY — REVOCATION — TIME OF TAKING EFFECT. — After a letter revoking the plaintiff's authority to sell stock had been delivered at the plaintiff's usual place of business, but before it had come to his knowledge, the principal sold the stock to persons with whom the plaintiff had previously negotiated. *Held*, that the plaintiff cannot